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HOUSE OF REPRESENTATIVES

REPORT
99-995

FUTURES TRADING ACT OF 1986

OCTOBER 14, 1986.—Ordered to be printed

Mr. DE LA GARZA, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 4613]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Futures Trading Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—FUTURES TRADING

Sec. 101. Fraudulent practices.
Sec. 102. Options transactions.
Sec. 103. Extraterritorial service of subpenas.
Sec. 104. Ex parte appointment of temporary receivers.
Sec. 105. Certain prohibited transactions.
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Sec. 107. Registered futures association disciplinary actions and membership restrictions.
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TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Cross compliance for producers of extra long staple cotton.
Sec. 202. Basis for computation of emergency compensation under the 1986 wheat program.
Sec. 203. Valencia peanuts.
Sec. 204. Local agricultural stabilization and conservation committees.
Sec. 205. Eligibility of certain land under the conservation reserve program.
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TITLE III—GRAIN QUALITY IMPROVEMENT

Sec. 301. Short title.
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Sec. 304. Insect infestation.
Sec. 305. Study of premiums for high-quality grain.
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Sec. 307. Study of uniform end-use value tests.

TITLE IV—FEDERAL MEAT INSPECTION

Sec. 401. Short title.
Sec. 402. Purpose.
Sec. 403. Amendments to Federal Meat Inspection Act.
Sec. 404. Savings provision.
Sec. 405. Sense of Congress.
Sec. 406. Annual report.
Sec. 407. Congressional reevaluation.
Sec. 408. Effective date; application of amendments.

TITLE I—FUTURES TRADING

SEC. 101. FRAUDULENT PRACTICES.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) by striking out "on or subject to the rules of any contract market," the second place it appears in the first sentence; and

(2) by adding at the end thereof the following new paragraph:

"Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange, or market.".

SEC. 102. OPTIONS TRANSACTIONS.

Subsection (c) of section 4c of the Commodity Exchange Act (7 U.S.C. 6c(c)) is amended to read as follows:

"(c) Not later than 90 days after the date of the enactment of the Futures Trading Act of 1986, the Commission shall issue regulations—

"(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

"(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe.".

SEC. 103. EXTRATERRITORIAL SERVICE OF SUBPENAS.

Section 6(b) of the Commodity Exchange Act (7 U.S.C. 15) is amended—

(1) in the third sentence, by inserting "(except as provided in the fifth sentence of this subsection)" immediately before "may administer oaths and affirmations, subpena witnesses";

(2) in the fourth sentence, by striking out "or any State" and inserting in lieu thereof ", any State, or any foreign country or jurisdiction"; and

(3) by inserting after the fourth sentence the following new sentence: "A subpena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.".

SEC. 104. EX PARTE APPOINTMENT OF TEMPORARY RECEIVERS.

The proviso of the first sentence of section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by inserting within the parenthetical phrase before the closing parenthesis the following: ", and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate".

SEC. 105. CERTAIN PROHIBITED TRANSACTIONS.

Section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended—

(1) by inserting immediately before the period at the end of the first sentence the following: "if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission"; and

(2) by striking out the second and third sentences and inserting in lieu thereof the following new sentence: "The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection.".

SEC. 106. AUTHORIZATION FOR APPROPRIATIONS.

Subsection (d) of section 12 of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

"(d) There are authorized to be appropriated to carry out this Act such sums as may be necessary for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1989.".

SEC. 107. REGISTERED FUTURES ASSOCIATION DISCIPLINARY ACTIONS AND MEMBERSHIP RESTRICTIONS.

Subsections (h) and (i) of section 17 of the Commodity Exchange Act (7 U.S.C. 21 (h) and (i)) are amended to read as follows:

"(h)(1) If any registered futures association takes any final disciplinary action against a member of the association or a person associated with a member, denies admission to any person seeking membership therein, or bars any person from being associated with a member, the association promptly shall give notice thereof to such member or person and file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate to carry out the purposes of this Act.

"(2) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission on its motion, or on application by any person aggrieved by the action. Such application shall be filed within 30 days after the date such notice is filed with the Commission and received by the aggrieved person, or within such longer period as the Commission may determine.

"(3)(A) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

"(B) The Commission shall establish procedures for expedited consideration and determination of the question of a stay.

"(i)(1) In a proceeding to review a final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction imposed by the association)—

"(A) if the Commission finds that—

"(i) the member or person associated with a member has engaged in the acts or practices, or has omitted the acts, that the association has found the member or person to have engaged in or omitted;

"(ii) the acts or practices, or omissions to act, are in violation of the rules of the association specified in the determination of the association; and

"(iii) such rules are, and were applied in a manner, consistent with the purposes of this Act,

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

"(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the sanction imposed by the association and, if appropriate, remand the case to the association for further proceedings.

"(2) If, after a proceeding under paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive or oppressive, having due regard for the public interest, the Commission, by order, shall cancel, reduce, or require the remission of the penalty.

"(3) In a proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association)—

"(A) if the Commission finds that—

"(i) the specific grounds on which the denial or bar is based exist in fact;

"(ii) the denial or bar is in accordance with the rules of the association; and

"(iii) such rules are, and were applied in a manner, consistent with the purposes of this Act,

the Commission, by order, shall so declare and, as appropriate, affirm or modify the action of the association, or remand the case to the association for further proceedings; or

"(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the action of the association and require the association to admit the applicant to membership or permit the person to be associated with a member, or, as appropriate, remand the case to the association for further proceedings.

"(4) Any person (other than a registered futures association) aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in the same manner as provided in section 6(b).".

SEC. 108. RULE REVIEW PROCEDURES.

Section 17(j) of the Commodity Exchange Act (7 U.S.C. 21(j)) is amended by striking out the third sentence.

SEC. 109. LEVERAGE TRANSACTIONS.

Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is amended to read as follows:

"SEC. 19. (a) Except as authorized under subsection (b), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

"(b)(1) Subject to paragraph (2), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum under a standardized contract described in subsection (a), contrary to the terms of any rule, regulation, or order that the Commission shall prescribe, which may include terms designed to ensure the financial solvency of the transaction or prevent manipulation or fraud. Such rule, regulation, or order may be made only after notice and opportunity for hearing. The Commission may set different terms and conditions for transactions involving different commodities.

"(2) No person may engage in any activity described in paragraph (1) who is not permitted to engage in such activity, by the rules, regulations, and orders of the Commission in effect on the date of the enactment of the Futures Trading Act of 1986, until the Commission permits such person to engage in such activity in accordance with regulations issued in accordance with subsection (c)(2).

"(c)(1)(A) Not later than 2 years after the date of the enactment of the Futures Trading Act of 1986, the Commission shall—

"(i) with the assistance of a futures association registered under this Act, conduct a survey concerning the persons interested in engaging in the business of offering to enter into, entering into, or confirming the execution of, the transactions described in subsection (b)(1); and

"(ii) transmit a report of the results of the survey to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"(B) Notwithstanding any other provision of law, for purposes of completing such report the Commission may direct, by rule, regulation, or order, a futures association registered under this Act to render such assistance as the Commission shall specify.

"(C) Such report shall include the findings and any recommendations of the Commission concerning—

"(i) whether such transactions serve an economic purpose;

"(ii) the most efficient manner, consistent with the public interest, to permit additional persons to engage in the business of offering to enter into, entering into, and confirming the execution of such transactions; and

"(iii) the appropriate regulatory scheme to govern such transactions to ensure the financial solvency of such transactions and to prevent manipulation or fraud.

"(2) The report shall also include Commission regulations governing such transactions. The regulations shall provide for permitting additional persons to engage in such transactions. The regulations shall become effective on the expiration of 90 calendar days on which either House of Congress is in session after the date of the transmittal of the report to Congress. The regulations—

"(A) may authorize or require, notwithstanding any other provision of law, a futures association registered under this Act to perform such responsibilities in connection with such transactions as the Commission may specify; and

"(B) may require that permission for additional persons to engage in such business be given on a gradual basis, so as not to place an undue burden on the resources of the Commission.

"(d) This section shall not affect any rights or obligations arising out of any transaction subject to this section, as in effect before the date of the enactment of the Futures Trading Act of 1986, that was entered into, or the execution of which was confirmed, before the date of the enactment of such Act.".

SEC. 110. TECHNICAL CORRECTIONS.

The Commodity Exchange Act is amended—

(1) in the third sentence of section 2(a)(1)(B)(iv)(I) (7 U.S.C. 2a(iv)(I)), by striking out "Securities Exchange Commission"

and inserting in lieu thereof "Securities and Exchange Commission";

(2) in the fourth full sentence of section 5a(12) (7 U.S.C. 7a(12)), by striking out "particpate" and inserting in lieu thereof "participate";

(3) in the first sentence of section 9(c) (7 U.S.C. 13(c)), by striking out "section 4k." and inserting in lieu thereof "section 4k,";

(4) in the first sentence of section 9(d) (7 U.S.C. 13(d)), by striking out "advance guarantee" and inserting in lieu thereof "advance guaranty";

(5) by repealing section 11 (7 U.S.C. 14 note);

(6) in the second full sentence of section 17(b)(2) (7 U.S.C. 21(b)(2)), by striking out "with in" and inserting in lieu thereof "within"; and

(7) in section 17(k)(1) (7 U.S.C. 21(k)(1)), by striking out "title" and inserting in lieu thereof "section".

SEC. 111. GAO STUDY OF TRADING IN CATTLE FUTURES CONTRACTS.

(a) STUDY.—The Comptroller General of the United States shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on—

(1) whether the reaction of the live cattle futures market to the results of the milk production termination program in March 1986, conducted under section 201(d)(3) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(3)), was based on and accurately reflected the then prevailing conditions of supply and demand;

(2) the effect of the trading in contracts for the future delivery of live cattle on—

(i) the price relationship between feeder cattle and fed cattle;

(ii) the price discovery process with respect to live cattle; and

(iii) price competition within the cattle industry;

(3) the effect of the use of packer contracts, as a means of obtaining slaughter cattle, on the increase in short hedging in contracts for the future delivery of live cattle and the effect of this increase in short hedging on prices in the futures and cash markets;

(4) the effect on the ability of the cash markets to accurately reflect prevailing conditions of supply and demand if packer contracts become the prevalent method of marketing fed cattle;

(5) whether the present delivery system for contracts for the future delivery of live cattle creates any bias (either upward or downward) in the cash price for cattle;

(6) whether the present delivery system for contracts for the future delivery of live cattle creates price volatility during the delivery month; and

(7) whether there are advantages or disadvantages to a cash settlement system in lieu of the present delivery system in the case of contracts for the future delivery of live cattle.

(b) REPORTS.—

(1) PRELIMINARY REPORT.—Not later than January 15, 1987, the Comptroller General shall submit a preliminary report on the results of the study required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(2) FINAL REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to such committees a detailed final report of the results of the study required under subsection (a).

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON.

Paragraph (16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

"(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

"(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

"(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton, compliance with the terms and conditions of the program authorized by this subsection may not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.".

SEC. 202. BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(E)(ii)) is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

SEC. 203. VALENCIA PEANUTS.

Section 108B(4)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445c-2(4)(A)) is amended by inserting after "additional peanuts" the following: "(other than net gains on additional peanuts in separate type pools established under paragraph (3)(B)(i) for Valencia peanuts produced in New Mexico)".

SEC. 204. LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be one local administrative area in any county for which there had been established less than three local administrative areas as of December 23, 1985."; and

(2) in the sixth sentence (as it existed before the amendment made by paragraph (1)), by striking out ": Provided," and all that follows through the period and inserting in lieu thereof a period.

SEC. 205. ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) is amended by adding at the end thereof the following new subsection:

"(f) For purposes of this subtitle, alfalfa and other multiyear grasses and legumes, in a rotation practice approved by the Secretary, shall be considered agricultural commodities.".

SEC. 206. MARKETING PRACTICES AND TRAINING.

(a) MARKETING PRACTICES OF FmHA APPLICANTS AND BORROWERS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of marketing practices used by applicants for and borrowers of farm loans made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.). The study shall include an examination of the methods used by the applicants and borrowers in marketing agricultural commodities, livestock, and aquacultural products and the extent to which the applicants and borrowers use advanced marketing techniques for such sales.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the study conducted under paragraph (1), together with any appropriate recommendations.

(b) ADVANCED MARKETING TRAINING FOR FARMERS AND RANCHERS.—The Secretary of Agriculture may establish a program to train farmers and ranchers in advanced techniques for the marketing of agricultural commodities, livestock, and aquacultural products produced by such farmers and ranchers, including (where appropriate as determined by the Secretary) training in the use of futures and options markets.

SEC. 207. TRANSFER OF LAND.

(a) IN GENERAL.—Subject to subsections (b), (c), and (d), the Secretary of Agriculture shall convey to the Nebraska Game and Parks Commission, all right, title, and interest of the United States in approximately 173 acres of National Forest System land in Dawes County, Nebraska, as depicted on a Department of Agriculture, Forest Service map entitled "Land Conveyance, Nebraska National Forest", dated October, 1985. The map and legal description of the land conveyed by this section shall be on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture.

(b) MINERAL DEPOSITS.—The conveyance made under subsection (a) shall reserve to the United States all gas, oil, coal, and other mineral deposits as may be found in the lands conveyed by this section.

(c) REVERSION.—The Secretary shall provide that title in the land conveyed shall revert to the United States on failure of the Nebraska Game and Parks Commission to use the land as part of the Chadron State Park, Nebraska.

(d) CONSIDERATION.—The land shall be conveyed without consideration, except that the Nebraska Game and Parks Commission shall bear all reasonable costs of administration, survey, and appraisal incident to such conveyance as determined by the Secretary.

TITLE III—GRAIN QUALITY IMPROVEMENT

SEC. 301. SHORT TITLE.

This title may be cited as the "Grain Quality Improvement Act of 1986".

SEC. 302. DECLARATION OF POLICY.

Section 2 of the United States Grain Standards Act (7 U.S.C. 74) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b) It is also declared to be the policy of Congress—

"(1) to promote the marketing of grain of high quality to both domestic and foreign buyers;

"(2) that the primary objective of the official United States standards for grain is to certify the quality of grain as accurately as practicable; and

"(3) that official United States standards for grain shall—

"(A) define uniform and accepted descriptive terms to facilitate trade in grain;

"(B) provide information to aid in determining grain storability;

"(C) offer users of such standards the best possible information from which to determine end-product yield and quality of grain; and

"(D) provide the framework necessary for markets to establish grain quality improvement incentives.".

SEC. 303. FOREIGN MATERIAL RECOMBINATION.

(a) PROHIBITED ACT.—Section 13 of the United States Grain Standards Act (7 U.S.C. 87b) is amended by adding at the end thereof the following new subsection:

"(d)(1) Subject to paragraphs (2) and (3), to ensure the quality of grain marketed in or exported from the United States—

"(A) no dockage or foreign material, as defined by the Secretary, once removed from grain shall be recombined with any grain; and

"(B) no dockage or foreign material of any origin may be added to any grain.

"(2) Nothing in paragraph (1) shall be construed to prohibit—

"(A) the treatment of grain to suppress, destroy, or prevent insects and fungi injurious to stored grain;

"(B) the marketing, domestically or for export, of dockage or foreign material removed from grain if such dockage or foreign material is marketed—

"(i) separately and uncombined with any such whole grain;

"(ii) in pelletized form; or

"(iii) as a part of a processed ration for livestock, poultry, or fish;

"(C) the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture;

"(D) the recombination of broken corn or broken kernels, as defined by the Administrator, with grain of the type from which the broken corn or broken kernels were derived;

"(E) effective for the period ending December 31, 1987, the recombination of dockage or foreign material, except dust, removed at an export loading facility from grain destined for shipment as a cargo under one export official certificate of inspection if—

"(i) the recombination occurs during the loading of the cargo;

"(ii) the purpose is to ensure uniformity of dockage or foreign material throughout that specific cargo; and

"(iii) the separation and recombination are conducted in accordance with regulations issued by the Administrator; or

"(F) the addition to grain of a dust suppressant, or the addition of confetti or any other similar material that serves the same purpose in a quantity necessary to facilitate identification of ownership or origin of a particular lot of grain.

"(3)(A) The Secretary may, by regulation, exempt from paragraph (1) the last handling of grain in the final sale and shipment of such grain to a domestic user or processor if such exemption is determined by the Secretary to be in the best economic interest of producers, grain merchants, the industry involved, and the public.

"(B) Grain sold under an exemption authorized by this paragraph shall be consumed or processed into one or more products by the purchaser, but may not be resold into commercial channels for such grain or blended with other grain for resale. Neither products nor byproducts derived therefrom (except vegetable oils as defined by the Secretary and used as a dust suppressant) shall be blended with or added to grain in commercial channels.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on May 1, 1987.

SEC. 304. INSECT INFESTATION.

Not later than 6 months after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall issue a final rule that revises grain inspection procedures and standards established under the United States Grain Standards Act (7 U.S.C. 71 et seq.) to more accurately reflect levels of insect infestation.

SEC. 305. STUDY OF PREMIUMS FOR HIGH-QUALITY GRAIN.

(a) STUDY.—After public comment from and in consultation with grain producers, grain merchants, grain processors, and grain ex-

porters, the Secretary of Agriculture shall conduct a study of the feasibility and appropriateness of adjusting Commodity Credit Corporation grain premium and discount schedules—

(1) to encourage the delivery, storage, and export of high-quality, clean grain; and

(2) to offer incentives to minimize the quantity of moisture, foreign material, dockage, shrunken and broken kernels, and damaged kernels in lots of grain pledged as collateral for Commodity Credit Corporation loans or in grain owned by the Commodity Credit Corporation.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit a report describing the results of the study required under subsection (a), together with recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 306. REVIEW OF OPTIMAL GRADE PROPOSAL.

(a) NOTICE AND COMMENT.—To evaluate the effects of moving to an optimal grain grading system, the Administrator of the Federal Grain Inspection Service shall—

(1) publish in the Federal Register a detailed description of the proposals contained in H.R. 5354, 99th Congress, the Optimal Grain Grading Act of 1986; and

(2) solicit public comment, during a period of not less than 60 days on—

(A) the optimal grain grading system as proposed in H.R. 5354; and

(B) the general objective of improving grain quality by revising the official United States grain standards to provide greater economic incentives for production and sale of high-quality grain.

(b) REPORT.—The Administrator shall report to Congress, by May 1, 1987, on the comments received and on the recommendations of the Administrator with respect to the matters on which comments were solicited.

SEC. 307. STUDY OF UNIFORM END-USE VALUE TESTS.

(a) STUDY.—The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to conduct a study of the need for and availability of uniform end-use value tests for grain. The study shall include the following:

(1) A survey of domestic and foreign buyers of grain to identify the information about grain characteristics that would be most useful to such buyers. The survey shall take into account those factors that buyers specify in contracts, test for, measure, or would measure if tests were available, including—

(A) the starch, oil, and protein content, breakage susceptibility, and individual kernel moisture of corn;

(B) the baking characteristics, protein content, gluten content and quality, and milling hardness of wheat; and

(C) the protein, oil, and free-fatty-acid content of soybeans.

(2) A review of the development and availability of tests for the characteristics identified in the survey conducted under

paragraph (1), including an evaluation of the costs of providing such tests.

(b) END-USE TESTS.—

(1) ONGOING REVIEW.—The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to maintain an ongoing review to determine the end-use tests that are of economic value to buyers, and the availability and costs of such tests.

(2) REVISION OF PROCEDURES.—The Administrator of the Federal Grain Inspection Service, to the extent practicable, shall revise official grain inspection and certification procedures to include within official inspection (as defined in section 3(i) of the United States Grain Standards Act (7 U.S.C. 75(i))) those tests that are identified under the study conducted under subsection (a) as useful, available, and economically feasible.

(c) REPORTS.—

(1) STUDY AND REVISION OF PROCEDURES.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall submit a report to Congress setting forth the results of the study conducted under subsection (a) and actions taken under subsection (b)(2).

(2) ONGOING REVIEW.—The Administrator shall report yearly to Congress on the ongoing review conducted under subsection (b)(1).

TITLE IV—FEDERAL MEAT INSPECTION

SEC. 401. SHORT TITLE.

This title may be cited as the "Processed Products Inspection Improvement Act of 1986".

SEC. 402. PURPOSE.

The amendments made by this title are in furtherance of the findings made by Congress in section 2 of the Federal Meat Inspection Act (21 U.S.C. 602).

SEC. 403. AMENDMENTS TO FEDERAL MEAT INSPECTION ACT.

(a) MANNER AND FREQUENCY OF INSPECTION.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 6 of the Federal Meat Inspection Act (21 U.S.C. 606) is amended by striking out "That for the purposes" and all that follows through "Provided, That" and inserting in lieu thereof the following:

"(a)(1) For the purposes set forth in the preceding provisions of this Act, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment.

"(2) Such examination and inspection shall be conducted with such frequency and in such manner as the Secretary considers necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary considers to be appropriate, including—

"(A) the nature and frequency of the processing operations at such establishment;

"(B) the adequacy and reliability of the processing controls and sanitary procedures at such establishment; and

"(C) the history of compliance with inspection requirements in effect under this Act, by the operator of such establishment or anyone responsibly connected with the business (as described in section 401(g)) that operates such establishment.

"(b)(1) All such products found by any of such inspectors and by the operator of such establishment to be not adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and passed'.

"(2) All such products found by any of such inspectors or by the operator of such establishment to be adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and condemned'. Each such condemned product shall be destroyed for human food purposes. The Secretary may suspend inspection at, and remove inspectors from, any establishment that fails to so condemn adulterated meat food products or fails to so destroy condemned meat food products.

"(c) For purposes of any examination and inspection, such inspectors shall have access to every part of an establishment at all times, by day or night, and without regard to whether such establishment is operated.

"(d) Notwithstanding the preceding provisions of this section,".

(b) ENFORCEMENT METHODS.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 401 of the Federal Meat Inspection Act (21 U.S.C. 671) is amended—

(1) by inserting "(a)" after the section designation;

(2) in the first sentence—

(A) by striking out "applicant, for" and inserting in lieu thereof "applicant for";

(B) by striking out "any felony, or (2)"; and

(C) by inserting before the period at the end thereof "or (2) any felony";

(3) in the second sentence—

(A) by indenting the first word so as to create a new paragraph; and

(B) by inserting "(f)" before the first word;

(4) by inserting "(g)" before the first word of the third sentence;

(5) in the fourth sentence—

(A) by striking out "The" and inserting in lieu thereof "(h) Except as provided in subsection (e)(2), the"; and

(B) by striking out "this section" and inserting in lieu thereof "subsection (e)"; and

(6) by inserting after subsection (a), as so designated by paragraph (1) of this subsection, the following new subsections:

"(b)(1) On the request of the Secretary at the time of the sentencing of an individual who is a person responsibly connected with any business requiring inspection under title I and who is convicted of a felony involving—

"(A) the intentional adulteration of food (except as defined in section 1(m)(8));

"(B) the adulteration of food, as defined in section 1(m)(8), with intent to defraud;

"(C) bribery; or

"(D) extortion;

the sentencing court shall issue a temporary order forbidding such individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I if the court finds that the exercise of operational control by, or the presence of, such individual at any such establishment either poses a direct and substantial threat to the public health or safety or, if such individual is convicted of a felony described in subparagraph (B), poses a clear likelihood of significant economic harm to consumers.

"(2) Such order shall terminate—

"(A) whenever the Secretary determines by order, after a hearing on the record, whether such individual should exercise operational control of, or be physically present at, any establishment requiring inspection under title I, and judicial review, if any, of such determination is completed; or

"(B) 90 days after the issuance of such temporary order by the court if the Secretary does not commence such hearing before the expiration of such 90 days;

whichever occurs earlier.

"(c) Any determination and order of the Secretary issued under subsection (a) or (b) shall be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than 30 days after the effective date of such order, a petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the relevant establishment is doing business. Judicial review of such order shall be on the record on which the determination and order are based.

"(d)(1) Subject to paragraph (3), the Secretary may commence a civil action in an appropriate court, as provided in section 404, to withdraw inspection service under title I with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I from exercising operational control of, or being present at, any establishment requiring inspection under title I.

"(2) If the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or such individual has repeatedly failed to comply with the requirements of this Act, or the rules and regulations issued under this Act, in a manner that poses a direct and substantial threat to the public health or safety, the court shall issue an order—

"(A) withdrawing inspection at such establishment; or

"(B) forbidding such individual to exercise operational control of, or to be physically present at, such establishment,

for such period as the court determines is necessary to carry out the purposes of this Act.

"(3) Not less than 90 days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary shall provide to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced, a written notice that includes—

"(A) a statement that the Secretary intends to commence such action;

"(B) a comprehensive description of the violations of this Act and the regulations issued under this Act alleged by the Secretary; and

"(C) a description of the actions the Secretary considers necessary to be taken by such recipient or such individual to comply with this Act and to eliminate the need to commence such civil action.

"(e)(1) The Secretary may temporarily withdraw inspection service under title I with respect to any establishment for such period as is necessary to ensure the safe and effective performance of official duties under this Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of such establishment—

"(A) threatened to forcibly assault;

"(B) forcibly assaulted;

"(C) forcibly intimidated; or

"(D) forcibly interfered with,

an employee of the United States engaged in, or on account of, the performance of any of such official duties.

"(2)(A) Notwithstanding paragraph (1), the Secretary may temporarily suspend inspection service under title I with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on such record, if the Secretary determines that temporary suspension of such inspection service is necessary for the safety of any employee who performs official duties under this Act.

"(B) If the Secretary receives, before or after temporarily suspending such inspection service in accordance with subparagraph (A), adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of such employee will not continue or recur, the Secretary may continue or restore such inspection service on condition that such assurances are fulfilled.".

(c) WARNING; REPORTING OF VIOLATIONS.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 406 of the Federal Meat Inspection Act (21 U.S.C. 676) is amended—

(1) in subsection (b), by adding at the end thereof the following new sentence: "In determining whether the public interest could be adequately served by a written notice of warning, the Secretary shall take into account, among other factors—

"(1) the compliance history of such establishment;

"(2) the magnitude of the violation;

"(3) whether compliance with this Act would likely be obtained as a resuli of such notice; and

"(4) whether such violation is of a minor or technical nature."; and

(2) by adding at the end thereof the following new subsection:

"(c) Unless the Secretary by regulation provides otherwise, before any violation of this Act is reported by the Secretary for prosecution in a criminal proceeding, the Secretary shall give the person alleged to have committed such violation—

"(1) reasonable notice that the Secretary intends to report such violation for prosecution; and

"(2) an opportunity to present to the Secretary, orally or in writing, views with respect to such proceeding.".

(d) CONFORMING AMENDMENTS.—

(1) NIGHTTIME.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 9 of the Federal Meat Inspection Act (21 U.S.C. 609) is amended by inserting ", except as provided in section 6," after "equines, and" the first place it appears.

(2) ADMINISTRATION.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 21 of the Federal Meat Inspection Act (21 U.S.C. 621) is amended by striking out "and meat food products" and inserting in lieu thereof "thereof, and of meat food products".

(e) CONSTRUCTION OF AMENDMENTS.—The amendments made by this section shall not be construed to authorize the Secretary of Agriculture to refuse to provide inspection under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) at an establishment solely because such establishment does not participate in a total plant quality-control program.

SEC. 404. SAVINGS PROVISION.

The expiration date provisions of section 403 shall not have the effect of releasing or extinguishing any penalty, forfeiture, or liability incurred under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), as amended by section 403, or under the rules or regulations issued under such Act.

SEC. 405. SENSE OF CONGRESS.

It is the sense of Congress that the Secretary of Agriculture should—

(1) carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.); and

(2) evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I of the Federal Meat Inspection Act, in order to identify the producer of such livestock.

SEC. 406. ANNUAL REPORT.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(1) any action proposed or taken by the Secretary to implement the amendments made by section 403;

(2) any action proposed or taken by the Secretary to carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(3) any action proposed or taken by the Secretary to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to in-

spection under such title, in order to identify the producer of such livestock; and

(4) any personnel action proposed or taken by the Secretary as a result of the amendments made by section 403 and any effort made by the Secretary to minimize any adverse economic effect of such amendments on employees of the Department of Agriculture.

SEC. 407. CONGRESSIONAL REEVALUATION.

It is the sense of Congress that, not later than 6 years after the date of the enactment of this Act, Congress shall—

(1) evaluate the operation and effects of the amendments made by section 403, for the purpose of determining whether to extend or modify the operation of such amendments; and

(2) enact such legislation as may be necessary to efficiently and effectively carry out the Federal Meat Inspection Act (21 U.S.C. 601 et seq.).

SEC. 408. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b) of this section, this title and the amendments made by this title shall become effective on the date of the enactment of this Act.

(b) TEMPORARY APPLICATION OF EXISTING LAW.—Sections 6, 9, and 21 of the Federal Meat Inspection Act (21 U.S.C. 606, 609, and 621), as in effect immediately before the date of the enactment of this Act, shall apply with respect to establishments until the Secretary of Agriculture first issues rules and regulations to implement the amendments made by section 403(a).

And the Senate agree to the same.

E. DE LA GARZA,
THOMAS S. FOLEY,
ED JONES,
CHARLES W. STENHOLM,
ROBIN TALLON,
E. THOMAS COLEMAN,
BILL EMERSON,

Additional conferees only for consideration of sections 407 and 501 of the Senate amendment:

JERRY HUCKABY,
ARLAN STANGELAND,

Additional conferees only for the consideration of section 407 of the Senate amendment:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
THOMAS J. DOWNEY,
ED JENKINS,
RICHARD A. GEPHARDT,
JOHN J. DUNCAN,
PHILIP M. CRANE,
BILL FRENZEL,

Additional conferees only for consideration of section 503 of the Senate amendment:

CHARLIE ROSE,
Managers on the Part of the House.
JESSE HELMS,
BOB DOLE,
RICHARD G. LUGAR,
THAD COCHRAN,
PETE WILSON,
EDWARD ZORINSKY,
JOHN MELCHER,
DAVID BOREN,
HOWELL HEFLIN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a subtitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The difference between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—FUTURES TRADING

(1) OPTIONS TRANSACTIONS

The House bill will strike out the current text of section 4c(c) of the Commodity Exchange Act, which imposes certain restrictions on the conduct of commodity option transactions and provides for a pilot program in the trading of agricultural options. In lieu of the current text of section 4c(c), the House bill will substitute a new text that will require the Commodity Futures Trading Commission—within 90 days after enactment of the bill—to issue regulations to—

(a) eliminate the pilot status of the program for the trading of commodity options on contract markets, including any numerical restrictions on the number of commodities or options contracts for which a contract market may be designated; and

(b) otherwise continue to permit the trading of such commodity options under such terms and conditions that the Commission, from time to time, may prescribe. (See. 3.)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Sec. 102.)

(2) EXTRATERRITORIAL SERVICE OF SUBPENAS

Both the House bill and the Senate amendment will give the Commodity Futures Trading Commission the power to serve subpenas on persons outside the territorial jurisdiction of United States courts to compel their attendance at Commission inquiries. The

House bill provides that an extraterritorial subpena could be issued only on the prior approval of the Commission. (Sec. 4; Sec. 102.)

The Senate amendment does not contain a similar provision making the issuance of such subpenas subject to Commission prior approval.

The Conference substitute adopts the House provision. (Sec. 103.)

The conferees intend that the Commission not routinely serve subpenas abroad. It is further the intention of the conferees that the Commission, when exercising its authority to serve subpenas, take into consideration the implications of such service on the broader foreign policy objectives of the United States. The conferees expect the Commission to find means of obtaining information in a way that seeks to avoid offending other nations and to consult with representatives of the receiving nation through the Department of State with a view toward minimizing any perceived intrusion on the sovereignty of that nation, where practicable and appropriate.

The conferees expect that the Commission's authority will parallel the current authority of the Department of Justice and the Federal Trade Commission in serving civil investigative demands abroad. It is the intent of the conferees that the Commission's use of subpena power abroad be limited to the pre-complaint, investigatory stage of enforcement proceedings. The courts and the Commission are bound by the Due Process Clause of the Constitution and this limitation would be a factor in any subpena enforcement proceeding.

(3) REAUTHORIZATION PERIOD

The House bill will authorize appropriations to carry out the Commodity Exchange Act during each of the 3 fiscal years ending with the 1989 fiscal year. (Sec. 7.)

The Senate amendment will authorize such appropriations for each of the 6 fiscal years ending with the 1992 fiscal year. (Sec. 402.)

The Conference substitute adopts the House provision. (Sec. 106.)

(4) REGISTERED FUTURES ASSOCIATIONS—DISCIPLINARY ACTIONS AND MEMBERSHIP RESTRICTIONS

(a) Notice of action

The House bill will require any registered futures association that takes a disciplinary action against one of its members or a person associated with a member or bars a person from membership or being associated with a member to promptly give notice of the action to the person involved and file notice of the action with the Commodity Futures Trading Commission. (Sec. 8.)

The Senate amendment contains a similar provision except that it specifically mentions only for filing of the notice with the Commission. (Sec. 301.)

The Conference substitute adopts the House provision. (Sec. 107.)

(b) Review of disciplinary action

Both the House bill and the Senate amendment contain a provision relating to review by the Commission of registered futures association disciplinary actions against its members or persons associated with members. In any such review, the Commission either must affirm the disciplinary action (with modifications possible) or remand the case to the association for further proceedings if certain specified findings are made. If any of the findings are not made, the disciplinary sanction must be set aside. The review hearing before the Commission could consist solely of consideration of the record before the association and the presentation of reasons to affirm, modify, or set aside the disciplinary sanction.

The specified findings to be decided by the Commission are the same in both bills except in one instance, as follows:

The House bill will require a decision on a finding that the person engaged in, or omitted, the acts the association has found the person to have engaged in or omitted. (Sec. 8.)

The Senate amendment will require a decision (on the basis of the record in the proceeding before the association and such other matters as might be presented to the Commission) on such finding as to whether the person engaged in, or failed to engage in, the acts or practices involved in the case. (Sec. 302.)

The Conference substitute adopts the House provision. (Sec. 107.)

(c) Review of denial of membership or bar of association

The House bill provides that, in a proceeding to review the denial of membership in a registered futures association or the barring of association with a member of a registered futures association, if the Commission finds that—

(a) the specific grounds for denial or bar exist in fact;

(b) the denial or bar is in accordance with the association's rules; and

(c) such rules are and were applied in a manner consistent with the Commodity Exchange Act;

the Commission must so declare and affirm or modify the action of the association, or remand the case to the association for further action. (Sec. 8.)

The Senate amendment is similar, except that the Commission has authority to dismiss the proceeding for review if the standards set out in the House bill are satisfied, rather than affirm the association action from which the appeal was taken. (Sec. 302)

The Conference substitute adopts the House provision. (Sec. 107.)

(5) LEVERAGE TRANSACTIONS

The House bill will rewrite section 19 of the Commodity Exchange Act, which provides the statutory framework for separate regulation of the leverage business. Under the House bill—

(1) all leverage contracts except gold and silver bullion, bulk coins, and platinum contracts would be prohibited. (NOTE.—Under current law, leverage contracts on agricultural commodities are specifically prohibited; and the Commodity Futures Trading Commission is authorized to prohibit any leverage transaction on a commodity not permitted by Commission

rules in effect on December 9, 1982, if the transaction would be contrary to the public interest);

(2) the entry of new firms into the leverage business would temporarily be prohibited until a survey and report relating to the industry (described below) are completed and regulations (to be included in the report) to permit new entrants are issued;

(3) the Commission would be required to conduct (with the assistance of a registered futures association) a survey concerning firms interested in entering the leverage business, and to report to Congress within 2 years on—

(a) the results of the survey;

(b) whether leverage transactions serve an economic purpose;

(c) the most efficient manner, consistent with the public interest, to permit new entrants into the business; and

(d) the appropriate leverage regulatory scheme to ensure financial solvency and prevent manipulation or fraud;

(4) the report would have to include regulations to govern the leverage business, which—

(a) must provide for permitting additional firms to enter the business;

(b) could provide for a registered futures association to perform leverage regulatory functions; and

(c) could provide for permitting new entrants into the business on a gradual basis, so as not to place an undue burden on the Commission;

(5) the regulations (described above) would have to go into effect at the end of 45 days of congresional session after they are transmitted to Congress; and

(6) rights and obligations arising out of leverage contracts entered into prior to enactment of the bill would not be affected by the changes in section 19 of the Act made by the bill. (Sec. 10.)

The Senate amendment would repeal section 19 of the Commodity Exchange Act and make several conforming changes in the Act, effective 2 years after the date the bill is enacted. (NOTE.—Under section 19, leverage transactions in agricultural commodities are prohibited; no person can enter into leverage transactions in gold or silver bullion or coins that are contrary to any Commission rule, regulation, or order designed to ensure the financial solvency of the transactions or prevent manipulation or fraud; the Commission is required to regulate leverage transactions in authorized commodities under terms and conditions prescribed by rule, regulation, or order (with different terms and conditions permitted for different commodities); and the Commission is authorized to prohibit any leverage transaction not permitted under Commission rules in effect on December 9, 1982, if the transaction would be contrary to the public interest.)

Under the Senate amendment, leverage transactions would no longer be under the Commission's exclusive jurisdiction and the Commission would cease being required or authorized to regulate leverage transactions as a distinct form of commodity instrument. (Secs. 201-208.)

The Conference substitute adopts the House provision with an amendment changing the period of congressional review of the regulations contained in the Commission's report on leverage from 45 days to 90 days. (Sec. 109.)

(6) TECHNICAL CORRECTIONS

The Senate amendment would make a number of technical corrections to the Commodity Exchange Act. These corrections would—

(a) correct a reference to the Securities and Exchange Commission;

(b) correct spelling and punctuation errors;

(c) correct a reference to "advance guaranty";

(d) correct a reference to a section of the Act; and

(e) repeal a section of the Act that is obsolete. (Sec. 403.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 110.)

(7) STUDY OF CATTLE FUTURES TRADING

The House bill requires the House Committee on Agriculture, in cooperation with land grant institutions and others, to carry out a study of the trading in contracts for cattle for future delivery to determine—

(a) the economic purpose of such training;

(b) whether such trading is being manipulated; and

(c) the economic effect of such trading on cattle producers and the beef industry.

If the study reveals that there is manipulation of trading in contracts for cattle for future delivery and that the manipulation has adverse effects on cattle producers or the beef industry, the House Committee on Agriculture must report legislation that will prevent the adverse effects in the future. (Sec. 11.)

The Senate amendment requires the Comptroller General to conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with emphasis on—

(a) whether the reaction of the live cattle futures market to the whole-herd dairy buyout program in March 1986 was based on and accurately reflected the then prevailing conditions of supply and demand;

(b) the effect that the trading in live cattle futures has on—

(i) the price relationship between feeder cattle and fed cattle;

(ii) the price discovery process for live cattle; and

(iii) price competition within the cattle industry;

(c) the effect of the use of packer contracts, as a means of obtaining slaughter cattle, on the increase in short hedging and the effect of this increase in short hedging on prices in the futures and cash markets;

(d) the effect on the ability of cash markets to reflect supply and demand if packer contracts become the prevalent method of marketing fed cattle;

(e) whether the present delivery system for futures contracts on live cattle creates (1) any bias (upward or downward) in the cash price for cattle or (2) price volatility during the delivery month; and

(f) whether there are advantages or disadvantages to the use of a system of cash settlement for futures contracts on live cattle, instead of the present system of delivering live cattle to fulfill such contracts.

Within 1 year after the date of enactment of the bill, the Comptroller General must submit a detailed report on the results of this study to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. A preliminary report must be submitted to both committees by January 15, 1987. (Sec. 404.)

The Conference substitute adopts the Senate provision. (Sec. 111.)

TITLE II—MISCELLANEOUS PROVISIONS

(8) MARKETING PRACTICES AND TRAINING

(a) Marketing practices of FmHA loan applicants and borrowers

The Senate amendment requires the Comptroller General to conduct a study of the marketing practices used by Farmers Home Administration loan applicants and borrowers. The study must include an examination of the channels through which these individuals sell their produce and the extent to which they use advanced marketing techniques.

The Comptroller General must submit a report describing the results of the study to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry not later than 180 days after the date of enactment of the bill. (Sec. 405(a).)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment changing the date by which the Comptroller General must submit his report to Congress from 180 days after date of enactment to 1 year after date of enactment. (Sec. 206(a).)

(b) Advanced marketing training

The Senate amendment provides that the Secretary of Agriculture may establish a program to train farmers and ranchers in advanced produce marketing techniques, including training in the use of futures and options markets. (Sec. 405(b).)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 206(b).)

(9) TRANSFER OF LAND

The Senate amendment would require the Secretary of Agriculture to transfer approximately 173 acres of National Forest System land to the Nebraska Game and Parks Commission, such land to be incorporated into an existing State park. Title to the land will revert to the United States if the land is not used as park land; the United States will reserve to itself all gas, oil, coal, and other min-

eral rights in the land. The transfer would be without consideration, except that the Nebraska Game and Parks Commission must pay the reasonable costs of administration, survey, and appraisal that are connected with the transfer. (Sec. 406.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 207.)

The conferees emphasize that the adoption of the Senate provision does not indicate a change in the underlying forestry statutes and congressional policy requiring payment of fair market value or an equal value exchange. The special circumstances involving a transfer to a State game and parks commission for a public purpose, with reverter, and the fact that the tract is bounded on three sides by existing State park land, warrant the action taken in this instance by the conferees.

(10) SUGAR QUOTA, COUNTRIES INVOLVED IN ILLEGAL NARCOTICS TRADE

(a) Administration of sugar quota

The Senate amendment prohibits the President of the United States, notwithstanding any other provision of law, from allocating any sugar import quota to any country (1) whose Government is involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities, as determined by the President; or (2) that imports sugar produced in Cuba, as determined by the President.

The Senate amendment requires the President to use all authorities available that are necessary to enable the Secretary of Agriculture to operate the sugar price support program at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation.

The Senate amendment requires the President, subject to the foregoing restrictions, to allocate any calendar year 1987 sugar import quota among foreign countries to ensure that the total quantity of sugar to be imported by the United States from each "beneficiary country" during calendar year 1987 is not less than the total quantity of sugar imported from such country during quota year 1986. The sugar comprising the base for the 1986 quota year must have been produced in the "beneficiary country".

The term "beneficiary country" is defined as having the same meaning as contained in the Caribbean Basin Economic Recovery Act, and includes the Republic of the Philippines, and the Republic of Ecuador. (Sec. 407(a).)

The House bill contains no comparable provision.

(NOTE.—Current law requires the President to use all authorities available that are necessary to enable the Secretary of Agriculture to operate the sugar price support program at no net cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation. In addition, the President is prohibited from allocating any of the sugar import quota to any country that is a net importer of sugar derived from sugarcane or sugar beets unless the appropriate officials of that country verify to the President that that country does not import

any sugar produced in Cuba for reexport to the United States. (7 U.S.C. 1446 note.)

The Conference substitute deletes the Senate provision.

(b) Congressional findings

The Senate amendment contains congressional findings that the Republic of the Philippines (1) has been a reliable supplier of sugar to the United States; (2) has a special historical relationship with the United States and has been a constant and dependable ally of the United States; (3) relies on the exportation of sugar to generate needed capital; (4) has not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and (5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country. (Sec. 407(b).)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(c) Allocation of sugar quota to the Republic of the Philippines

The Senate amendment provides that the total base quota amount of sugars, syrups, and molasses imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States must be allocated on such basis that the quota allocated to the Republic of the Philippines may not be less than the quota allocated to any other country.

The Senate amendment provides that during any calendar year in which sugars, syrups, and molasses from any country are not subject to any rate of duty provided for in subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, syrups, and molasses from the Republic of the Philippines must be permitted to enter duty-free to the same extent.

The Senate amendment prohibits, unless specifically authorized by statute, any agency or instrumentality of the United States from providing in any rule, regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, syrups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, syrups, and molasses from the Republic of the Philippines. (Sec. 407(c).)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(11) CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STABLE COTTON

The Senate amendment would amend paragraph (16) of section 103(h) of the Agricultural Act of 1949 to provide that—

(a) for the 1987 and 1988 crops of extra long staple cotton, the Secretary of Agriculture my not require compliance with the terms and conditions of the extra long staple cotton program as a condition of eligibility for loans, purchases, or payments made under any other commodity program; and

(b) for the 1989 and 1990 crops of extra long staple cotton, the Secretary of Agriculture may require that, as a condition

of eligibility for the extra long staple cotton program, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the corp acreage base established for the farm for that commodity. (Sec. 501.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 201.)

(12) LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES

The Senate amendment would amend the fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act to make explicit that there may be one local agricultural stabilization and conservation administrative area in any county for which there had been established less than three such areas as of December 23, 1985. (Sec. 502.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provisions. (Sec. 204.)

(13) VALENCIA PEANUTS

The Senate amendment would amend section 108B(4)(A) of the Agricultural Act of 1949 to provide that distributions of net gains to producers on additional Valencia peanuts produced in New Mexico and placed in a separate pool for such peanuts will not be reduced by Commodity Credit Corporation losses on quota peanuts that are placed under loans from other pools. (Sec. 503.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 203.)

(14) BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM

(a) Compensation

The Senate amendment would amend section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 to provide that, for the 1986 crop of wheat, the payment rate per bushel for emergency compensation would be determined on the basis of the weighted average market price, per bushel, received by producers during the first 5 months of the marketing year. (Sec. 504(a).)

The House bill contains no comparable provision.

(NOTE.—Under current law, the payment rate per bushel for emergency compensation is based on the weighted average market price, per bushel, received by producers during the full marketing year.)

The Conference substitute adopts the Senate provision. (Sec. 202.)

(b) Producer option

For the 1986 crop of wheat, wheat producers could elect to have any emergency payment due them calculated and paid according to the provision in current law or the provision to be added by the Senate amendment. Those producers choosing to have their payments calculated and paid under the provisions in current law

would have to notify the Secretary of Agriculture of their choice by December 1, 1986. (Sec. 504(b).)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(15) ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM

The Senate amendment would amend section 1231 of the Food Security Act of 1985 to provide that, for purposes of the Conservation Reserve Program, alfalfa and other multiyear grasses and legumes, in rotation as approved by the Secretary, must be considered agricultural commodities. (Sec. 505.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 205.)

The conferees agree that any land made eligible for the Conservation Reserve Program by this amendment must meet the same actual soil loss criteria as cropland that is eligible under the current program. The Conservation Reserve Program is designed to convert highly erodible cropland that is currently suffering from severe erosion problems to less intensive uses. This amendment should not be implemented in a way that would prove detrimental to that goal.

TITLE III—GRAIN QUALITY IMPROVEMENT

(16) GRAIN QUALITY IMPROVEMENT

Title VII of the Senate amendment contains provisions that may be cited as the "Grain Quality Improvement Act of 1986."

The House bill contains no provisions comparable to title VII of the Senate amendment. However, the House of Representatives has passed a bill, H.R. 5407, that has the same short title and contains comparable provisions. In the description of differences that follows, the House position, as contained in H.R. 5407 as passed by the House, is noted parenthetically.

(a) Policy statement

The Senate amendment will revise the United States Grain Standards Act declaration of policy to add statements that it is the policy of Congress to promote the marketing of high quality grain; that the primary objective of official United States grain standards is to accurately determine grain quality; and that the grain standards must provide a framework for the markets to establish grain quality improvement standards. (Sec. 702.)

The House bill contains no comparable provision. (NOTE.—Section 2 of H.R. 5407 is the same as the Senate provision.)

The Conference substitute adopts the Senate provision. (Sec. 302.)

(b) Prohibition of recombination of dockage and foreign material

The Senate amendment will add a new provision to the Grain Standards act, effective May 1, 1987, to prohibit (1) the recombination of dockage or foreign material, as defined by the Secretary of Agriculture, with grain, and (2) the addition of dockage or foreign material to grain. The Senate amendment also will require the Sec-

retary of Agriculture to conduct a study to determine the appropriate levels of dust in grain to be exported. Based on the results of such study, the Secretary would have to establish a maximum tolerance for dust in grain to be exported and issue regulations applicable to the recombination of dust with grain. (Sec. 703.)

The House bill contains no comparable provision. (NOTE.—Section 3 of H.R. 5407 contains the same provisions as the Senate amendment relating to the new prohibitions, except that it also will specifically prohibit the recombination of dust with grain. It contains no provision relating to a study of dust in export grain.)

The Conference substitute adopts the Senate provision with an amendment deleting the study of dust levels and the provision requiring the Secretary to set a maximum tolerance for dust in grain to be exported. (Sec. 303.)

(c) Exceptions

The Senate amendment provides that the prohibition against recombination of addition of dockage of foreign material will not apply to—

(1) the treatment of grain to suppress, destroy, or prevent insects and fungi injurious to stored grain;

(2) the marketing, domestically or for export, of dockage or foreign material removed from grain when such dockage or foreign material is marketed (A) separately and uncombined with whole grain or (B) in pelletized form or as a part of a processed ration for livestock, poultry, or fish;

(3) the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture;

(4) the recombination of broken corn or broken kernels, as defined by the Administrator of the Federal Grain Insepction Service, with grain of the type from which the broken corn or broken kernels were derived;

(5) effective for the period ending December 31, 1987, the recombination of dockage or foreign material, removed at an export loading facility from grain destined for shipment as a cargo under one export inspection certificate when (A) the recombination occurs during the loading of the cargo, (B) the purpose is to ensure uniformity of dockage or foreign material throughout that specific cargo, and (C) the separation and recombination are conducted in accordance with regulations issued by the Administrator; and

(6) the addition to grain of a dust suppressant, or the addition of confetti or any other similar material in an amount necessary to facilitate identification of ownership or origin of a particular lot of grain.

Further, the Secretary of Agriculture would be permitted to exempt from the prohibitions, by regulation, the last handling of grain in the final sale and shipment of grain to a domestic user or processor when the exemption is determined by the Secretary to be in the best economic interest of producers, grain merchants, the industry involved, and the public. Grain sold under such an exemption must be consumed or processed into one or more products by the purchaser and could not be resold into commercial channels for grain or blended with other grain for resale. Also, products or by-

products derived from such grain could not be blended with or added to grain in commercial channels. (Sec. 703.)

The House bill contains no comparable provision. (NOTE.—Section 3 of H.R. 5407 contains the same provisions as the Senate amendment, except that—

(1) with respect to the exception for export cargoes described in clause (5) of the analysis of the Senate provision, H.R. 5407 would not extend the exception to the recombination of dust, once it is removed from grain;

(2) H.R. 5407 contains an exception to the prohibitions in addition to the six listed in the analysis of the Senate provision, as follows: Any other addition of any foreign material detemined by the Secretary to be in the interest of grain producers and to be neutral or constructive in achieving the goal of ensuring the quality of grain marketed in or exported from the United States;

(3) under H.R. 5407, the exemption of the last handling of grain from the prohibitions would expire December 31, 1987; and

(4) also with respect to the last handling of grain, the byproducts exception to the exemption (which will prohibit the blending, with grain, of products or byproducts derived from grain after it is last handled) would be made subject to the provision in H.R. 5407—but not in the Senate amendment—described in clause (2) above, that gives the Secretary authority to provide other exemptions from the prohibitions.)

The Conference substitute adopts the Senate provision with amendment—

(1) adding the words "except dust" to the provision providing that, effective only for the period ending December 31, 1987, the prohibition against the recombination of dockage or foreign material will not apply if the dockage or foreign material is removed at an export loading facility from grain destined for shipment as a cargo under one export official certificate of inspection and the recombination is carried out subject to the restrictions in the Senate amendment; and

(2) authorizing the blending of vegetable oils with grain that is in commercial channels for the purpose of suppressing grain dust. (Sec. 303.)

(d) Insect infestation

The Senate amendment will require the Administrator of the Federal Grain Inspection Service, not later than 6 months after the bill is enacted, to issue a final rule that revises grain inspection procedures and standards under the United States Grain Standards Act to more accurately reflect levels of insect infestation. (Sec. 704.)

The House bill contains no comparable provision. (NOTE.—Section 5 of H.R. 5407 is the same as the Senate provision.)

The Conference substitute adopts the Senate provision. (Sec. 304.)

(e) Grain premium study

The Senate amendment will require the Secretary of Agriculture, in consultation with farmers and Members of the grain industry, to make a study of the feasibility of adjusting the Commodity

Credit Corporation grain premium and discount schedules to encourage the delivery, storage, and export of high quality grain. The results of the study would have to be reported to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry within 180 days after the enactment of the bill. (Sec. 705.)

The House bill contains no comparable provision. (NOTE.—Section 6 of H.R. 5407 is the same as the Senate provision.)

The Conference substitute adopts the Senate provision. (Sec. 305.)

(f) Grain grading proposal

The Senate amendment will require the Secretary of Agriculture to publish and seek public comment on proposals contained in a pending House bill, H.R. 5354, the Optimal Grain Grading Act of 1986. The Administrator of the Federal Grain Inspection Service would be required to report to Congress, by May 1, 1987, on comments received and his recommendations with respect to the matters on which comments were solicited. (Sec. 706.)

The House bill contains no comparable provisions. (NOTE.—Section 7 of H.R. 5407 is the same as the Senate provision.)

The Conference substitute adopts the Senate provision. (Sec. 306.)

(g) Uniform end-use value tests

The Senate amendment will direct the Department of Agriculture to study the need for and availability of uniform end-use tests for grain. Where tests are found to be useful, available, and economically feasible, the Federal Grain Inspection Service would be directed to adopt them as far as practicable. The Administrator of the Federal Grain Inspection Service will have to submit a report to Congress, not later than 1 year after the date of enactment of the bill, setting forth the results of the study and actions taken by the Service to adopt helpful end-use tests. Further, the Secretary would report annually to Congress on his ongoing review of end-use tests. (Sec. 707.)

The House bill contains no comparable provision. (NOTE.—Section 8 of H.R. 5407 is the same as the Senate amendment.)

The Conference substitute adopts the Senate provision. (Sec. 307.)

TITLE IV—FEDERAL MEAT INSPECTION

(17) FEDERAL MEAT INSPECTION

Title VI of the Senate amendment contains provisions that may be cited as the "Processed Products Inspection Improvement Act of 1986."

The House bill contains no provisions comparable to title VI of the Senate amendment.

(a) Findings

The Senate amendment provides that the amendments made by title VI to the Federal Meat Inspection Act ("the Act") are in furtherance of the findings in section 2 of the Act. (NOTE.—The findings in section 2 of the Act include statements that meat and meat food products are important sources of the Nation's total supply of

food; it is essential and in the public interest that consumers be assured of wholesome meat and food products; articles regulated under the Act are in or affect interstate commerce; and regulation under the Act is appropriate to prevent burdens on interstate commerce and protect consumers.) (Sec. 602)

The House bill constains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 402.)

(b) Examination and inspection

The Senate amendment amends section 6 of the Act to require the Secretary of Agriculture to cause to be made, by inspectors appointed for that purposes, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment. (NOTE.—Current law requires the Secretary to cause to be made, by inspectors appointed for that purpose, an examination and inspection of all meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment.)

The Senate amendment also adds a new provision to section 6 of the Act to require that the examination and inspection be conducted with the frequency and in the manner as the Secretary deems necessary and provides in rules and regulations, taking into account factors that the Secretary deems appropriate, including the—

(1) nature and frequency of processing operations at the establishment;

(2) adequacy and reliability of processing controls and sanitary procedures at the establishment; and

(3) history of compliance with inspection requirements under the Act by operator or anyone responsibly connected wtih the business (as described in subsection (g) of section 401 of the Act) that operates the establishment. (NOTE.—The Senate amendment will designate the third sentence of current section 401 as subsection (g) thereof. That sentence provides that a person is deemed to be responsibly connected with a business if he is a partner, officer, director, holder, or owner of 10 percent or more of its voting stock, or an employee in a managerial or executive capacity.) (Sec. 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

(c) Inspection

The Senate amendment modifies section 6 of the Act to provide that all products found by the inspectors, if any, and by the operator of the establishment not to be adulterated must be marked, stamped, tagged, or labeled as "inspected and passed"; and all products found by any inspector or the operator to be adulterated must be marked, stamped, tagged, or labeled as "inspected and condemned". All condemned products must be destroyed for human food purposes. The Secretary can suspend inspection at, and thereby remove inspectors from, any establishment that fails to condemn adulterated meat food products or fails to destroy condemned meat food products. For purposes of any examination and inspection, inspectors must have access to every part of an establishment

at all times, by day or night, and without regard to whether the establishment is operated. (Sec. 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

(d) Technical amendments

The Senate amendment makes technical amendments to section 401 of the Act to designate subsections and conform its provisions to the amendments in the Senate amendment. The first sentence of section 401 would be designated as subsection (a), the second and third sentences as subsections (f) and (g), and the fourth and fifth sentences as subsection (h). The provisions of the fourth and fifth sentences (finality of determinations and review) would be made to apply to new subsection (e), to be added.

The Senate amendment also amends section 401 of the Act by adding new subsections (b), (c), (d), and (e). (Sec. 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

(e) Consequences of felony conviction

The Senate amendment amends section 401 of the Act to add a new subsection (b) providing that, on the request of the Secretary at the time of sentencing of an individual who is responsibly connected with any business requiring inspection under title I of the Act and who is convicted of a felony involving—

(1) the intentional adulteration of food (except as defined in section 1(m)(8) of the Act;

(2) the adulteration of food, as defined in section 1(n)(8) of the Act, with intent to defraud;

(3) bribery; or

(4) extortion;

the sentencing court must issue a temporary order forbidding the individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I, if the court finds that the exercise of operational control by, or the presence of, the individual at the establishment poses a direct and substantial threat to the public health or safety or, if the individual is convicted of a felony for the adulteration of food (as defined in section 1(m)(8) of the Act) with the intent to defraud, poses a clear likelihood of significant economic harm to consumers. (Sec. 603.)

(NOTE.—Section 1(n)(8) of the Act currently provides that the term "adulterated" will apply to any carcass, part thereof, meat or meat food product if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

(f) Time limitation on temporary order

The Senate amendment provides that the order must terminate on the earlier of (1) the point at which the Secretary determines by order, after a hearing on the record, whether the individual should exercise operational control of, or be physically present at, any establishment requiring inspection under title I of the Act, and judicial review, if any, of the determination is completed; or (2) 90 days after the issuance of the temporary order by the court if the Secretary does not commence a hearing on the determination within 90 days. (Sec. 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

(g) Petition for review

The Senate amendment amends section 401 of the Act to add a new subsection (c) providing that any determination and order of the Secretary issued under subsection (a) (existing law) or (b) (described above) will be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than 30 days after the effective date of the order, a petition for the review of the order in the United States Court of Appeals for the Distict of Columbia, or in the court of appeals for the circuit where the relevant establishment is doing business. Judicial review of the order must be on the record on which the determination and order are based. (Sec. 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

(h) Civil actions

The Senate amendment amends section 401 of the Act to add a new subsection (d) enabling the Secretary to seek court orders against persons and establishments, in addition to taking direct action against establishments under subsection (a) or against persons convicted of certain felonies under subsection (b). Subject to the limitation described below, the Secretary may commence a civil action in an appropriate court, as provided in section 404 of the Act, to withdraw inspection service under title I with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I from exercising operational control of, or being present at, any establishment requiring inspection under title I.

The Senate amendment provides that if the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or the individual connected with the recipient has repeatedly failed to comply with the requirements of the Act, or the regulations thereunder, in a manner that poses a direct and substantial threat to the public health or safety, the court must issue an order withdrawing inspection at the establishment or forbidding the individual to exercise operational control of, or to be physically present at, the establishment, as petitioned for under the provision described above, for a period that the court deems necessary to carry out the purposes of the Act.

The Senate amendment provides that not less than 90 days, and not more than 450 days, before commencing the civil action described above, the Secretary must give to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced, a written notice that includes a statement that the Secretary intends to commence the action, a comprehensive description of the violations of the Act and the regulations thereunder alleged by the Secretary, and description of the actions the Secretary considers necessary to be taken by such recipient or individual to comply with the Act to eliminate the need to commence the civil action. (See 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

The conferees note that this provision constitutes extraordinary authority to withdraw inspection or to suspend a responsibly connected individual and should be sought and granted only when it is warranted. What constitutes a direct and substantial threat is a factual question to be addressed on a case-by-case basis by a Federal district court.

In a proceeding filed under this provision, the conferees intend that the Secretary would have the burden of establishing, by clear and convincing evidence, both that the establishment or individuals has repeatedly failed to comply with the Act and that the past noncompliance and likelihood of future noncompliance pose a direct and substantial threat to the public health. Regarding whether or not conduct is repeated, attention should be given not only to the number of times the alleged violation has occurred, but also the amount of time between violations and whether there has been a substantial improvement in compliance prior to commencement of the action. Regarding whether the noncompliance poses a direct threat to the public health, the focus should be on whether there is a risk to public health that would directly flow from the alleged violation.

This provision also specifies that withdrawal or suspension should be for the period necessary to protect the public health. The conferees intend that the exact period of time be substantially a question within the discretion of the district court.

(i) Withdrawal of inspection service

The Senate amendment adds a new subsection (e) to section 401 providing that the Secretary may temporarily withdraw inspection service under title I of the Act with respect to any establishment for a period necessary to ensure the safe and effective performance of official duties under the Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of the establishment threatened to forcibly assault, forcibly assaulted, forcibly intimidated, or forcibly interfered with an employee of the United States engaged in, or on account of, the performance of any official duty. (Sec. 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision (Sec. 403.)

(j) Temporary suspension

The Senate amendment provides that the Secretary may temporarily suspend inspection service under title I with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on the record, if the Secretary determines that temporary suspension of inspection service is necessary for the safety of any employee who performs official duties under the Act. If the Secretary receives, before or after temporarily suspending such inspection service, adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of the employee will not continue or recur, the Secretary may continue or restore inspection service on the condition that the assurances are fulfilled. (Sec. 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

(k) Secretarial discretion

The Senate amendment amends subsection (b) of section 406 of the Act by adding a new provision to specify that, in determining whether the public interest could be adequately served by a written notice of warning (in lieu of criminal prosecution under subsection (a) of section 406), the Secretary must take into account, among other factors—

(1) the compliance history of the establishment;

(2) the magnitude of the violation;

(3) whether compliance with the Act likely would be obtained as a result of the notice; and

(4) whether the violation is of a minor or technical nature. (Sec. 603.)

(NOTE.—Currently, subsection (b) states that nothing in the Act can be construed as requiring the Secretary to report for prosecution or for the institution of libel or injunction proceedings, minor violations of the Act whenever the Secretary believes that the public interest will be adequately served by a suitable written notice of warning.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

(l) Notice

The Senate amendment amends section 406 of the Act by adding a new subsection (c) to provide that, unless the Secretary by regulation provides otherwise, before any violation of the Act is reported by the Secretary for criminal prosecution, the Secretary must give the person alleged to have committed the violation reasonable notice that the Secretary intends to report such violation for prosecution, and an opportunity to present to the Secretary, orally or in writing, views with respect to the proceeding. (Sec. 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 403.)

(m) Conforming amendments

The Senate amendment makes conforming amendments to sections 9 and 21 of the Act, and provides that the amendments to the Act made by the Senate amendment will not be construed to authorize the Secretary of Agriculture to refuse to provide inspection under the Act at an establishment solely because the establishment does not participate in a total plant quality-control program. (Sec. 603.)

The House bill contains no comparable provision.

The Conference substitute adopts the House provision. (Sec. 403.)

(n) Sunset

The Senate amendment, effective 6 years after the date of enactment of the bill, amends sections 6, 9, 21, 401, and 406 of the Act to read, respectively, as the sections read immediately before the date of enactment of the bill. The effect of the provision is to "sunset" the amendments to the Act to be made by the bill in 6 years.

The Senate amendment contains a savings provision that states that the sunset provisions will not have the effect of releasing and penalty, forfeiture, or liability incurred under the Act, as amended, or regulations issued thereunder. (Sec. 604.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision making the amendments to sections 6, 9, 21, 401, and 406 effective for 6 years. (Secs. 403, 404.)

(o) Detection of residues

The Senate amendment provides that it is the sense of Congress that the Secretary of Agriculture should carry out a program to detect residues in livestock that are subject to inspection under title I of the Act, and evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I to identify the producer of the livestock. (Sec. 605.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 405.)

(p) Report to Congress

The Senate amendment provides that, not later than 1 year after the date of the enactment of the bill and annually thereafter, the Secretary of Agriculture must submit to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry a report describing any action proposed or taken by the Secretary—

(1) to implement the amendments made by title VI;

(2) to carry out a program to detect residues in livestock that are subject to inspection under title I of the Act;

(3) to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I in order to identify the producer of the livestock; and

(4) regarding personnel, as a result of the amendments made by title VI, plus any effort made by the Secretary to minimize

any adverse economic effect of the amendments on employees of the Department of Agriculture. (Sec. 605.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision (Sec. 406.)

(q) Congressional evaluation

The Senate amendment requires Congress, not later than 6 years after the date of enactment of the bill, to evaluate the operation and effects of the amendments to the Act made by title VI, for the purpose of determining whether to extend or modify the operation of the amendments, and enact legislation necessary to efficiently and effectively carry out the Act. (Sec. 607.)

The House bill contains no comparable provision.

The Conference substitute incorporates the substantive points of the Senate provision. (Sec. 407.)

(r) Effective date

The Senate amendment provides that, except as specifically provided, the amendment to the Act made by title VI will take effect on the date of enactment of the bill. The Senate amendment provides that section 6, 9, and 21 of the Act, as in effect immediately before the date of enactment of the bill, will apply with respect to establishments until the Secretary first issues regulations as provided in the amendment made by section 603. (Sec. 608.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 408.)

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